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**BEFORE THE  
PHYSICAL THERAPY BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. 1D 2003 63462

ROBERT D. GRAHAM  
1099 N. Mar Vista  
Pasadena, CA 91104

**A C C U S A T I O N**

Physical Therapist Assistant License No. AT 4342

Respondent.

Complainant alleges:

**PARTIES**

1. Steven K. Hartzell (Complainant) brings this Accusation solely in his official capacity as the Executive Officer of the Physical Therapy Board of California, Department of Consumer Affairs.

2. On or about April 25, 1996, the Physical Therapy Board of California issued Physical Therapist Assistant License No. AT 4342 to Robert D. Graham (Respondent). The Physical Therapist Assistant License was in full force and effect at all times relevant to the charges brought herein and will expire on February 28, 2006, unless renewed.

**JURISDICTION**

3. This Accusation is brought before the Physical Therapy Board of California (Board), Department of Consumer Affairs, under the authority of the following

1 laws. All section references are to the Business and Professions Code unless otherwise  
2 indicated.

3 4. Section 2609 of the Code states:

4 The board shall issue, suspend, and revoke licenses and approvals to practice  
5 physical therapy as provided in this chapter.

6 5. Section 2660 of the Code states:

7 The board may, after the conduct of appropriate proceedings under the  
8 Administrative Procedure Act, suspend for not more than 12 months, or revoke, or  
9 impose probationary conditions upon any license, certificate, or approval issued  
10 under this chapter for unprofessional conduct that includes, but is not limited to, one  
11 or any combination of the following causes:

12 (a) Advertising in violation of Section 17500.

13 (b) Fraud in the procurement of any license under this chapter.

14 (c) Procuring or aiding or offering to procure or aid in criminal  
15 abortion.

16 (d) Conviction of a crime which substantially relates to the  
17 qualifications, functions, or duties of a physical therapist or physical  
18 therapist assistant. The record of conviction or a certified copy thereof shall  
19 be conclusive evidence of that conviction.

20 (e) Impersonating or acting as a proxy for an applicant in any  
21 examination given under this chapter.

22 (f) Habitual intemperance.

23 (g) Addiction to the excessive use of any habit-forming drug.

24 (h) Gross negligence in his or her practice as a physical therapist or  
25 physical therapy assistant...

26 6. Section 2661 of the Code states:

27 A plea or verdict of guilty or a conviction following a plea of nolo  
28 contendere made to a charge of a felony or of any offense which substantially relates

1 to the qualifications, functions, or duties of a physical therapist is deemed to be a  
2 conviction within the meaning of this article. The board may order the license  
3 suspended or revoked, or may decline to issue a license, when the time for appeal  
4 has elapsed, or the judgement of conviction has been affirmed on appeal or when an  
5 order granting probation is made suspending the imposition of sentence, irrespective  
6 of a subsequent order under Section 1203.4 of the Penal Code allowing that person  
7 to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside  
8 the verdict of guilty, or dismissing the accusation, information, or indictment.

9 7. California Code of Regulations, title 16, section 1399.20, states:

10 “For the purposes of denial, suspension or revocation of a license or  
11 approval, pursuant to Division 1.5 (commencing with Section 475) of the code, a  
12 crime or act shall be considered to be substantially related to the qualifications,  
13 functions or duties of a person holding a license or approval under the Physical  
14 Therapy Practice Act if to a substantial degree it evidences present or potential  
15 unfitness of a person to perform the functions authorized by the license or approval  
16 in a manner consistent with the public health, safety or welfare. Such crimes or acts  
17 shall include but not be limited to the following:

18 “(a) Violating or attempting to violate, directly or indirectly, or  
19 assisting in or abetting the violation of, or conspiring to violate any  
20 provision or term of the Physical Therapy Practice Act.

21 “(b) Conviction of a crime involving fiscal dishonesty arising out of  
22 or in connection with the practice of physical therapy.

23 “(c) Violating or attempting to violate any provision or term of the  
24 Medical Practice Act.”

25 8. Section 490 of the Code states:

26 “A board may suspend or revoke a license on the ground that the licensee  
27 has been convicted of a crime, if the crime is substantially related to the  
28 qualifications, functions, or duties of the business or profession for which the

1 license was issued. A conviction within the meaning of this section means a plea or  
2 verdict of guilty or a conviction following a plea of nolo contendere. Any action  
3 which a board is permitted to take following the establishment of a conviction may  
4 be taken when the time for appeal has elapsed, or the judgment of conviction has  
5 been affirmed on appeal, or when an order granting probation is made suspending  
6 the imposition of sentence, irrespective of a subsequent order under the provisions  
7 of Section 1203.4 of the Penal Code.”

8 9. Section 493 of the Code states:

9 “Notwithstanding any other provision of law, in a proceeding conducted by  
10 a board within the department pursuant to law to deny an application for a license or  
11 to suspend or revoke a license or otherwise take disciplinary action against a person  
12 who holds a license, upon the ground that the applicant or the licensee has been  
13 convicted of a crime substantially related to the qualifications, functions, and duties  
14 of the licensee in question, the record of conviction of the crime shall be conclusive  
15 evidence of the fact that the conviction occurred, but only of that fact, and the board  
16 may inquire into the circumstances surrounding the commission of the crime in  
17 order to fix the degree of discipline or to determine if the conviction is substantially  
18 related to the qualifications, functions, and duties of the licensee in question.

19 “As used in this section, ‘license’ includes ‘certificate,’ ‘permit,’ ‘authority,’  
20 and ‘registration.’”

21 10. Section 2661.5 of the Code states:

22 (a) In any order issued in resolution of a disciplinary proceeding  
23 before the board, the board may request the administrative law judge to  
24 direct any licensee found guilty of unprofessional conduct to pay to the  
25 board a sum not to exceed the actual and reasonable costs of the  
26 investigation and prosecution of the case.

27 (b) The costs to be assessed shall be fixed by the administrative law  
28 judge and shall not in any event be increased by the board. When the board

1 does not adopt a proposed decision and remands the case to an  
2 administrative law judge, the administrative law judge shall not increase the  
3 amount of the assessed costs specified in the proposed decision.

4 (c) When the payment directed in an order for payment of costs is  
5 not made by the licensee, the board may enforce the order of payment by  
6 bringing an action in any appropriate court. This right of enforcement shall  
7 be in addition to any other rights the board may have as to any licensee  
8 directed to pay costs.

9 (d) In any judicial action for the recovery of costs, proof of the  
10 board's decision shall be conclusive proof of the validity of the order of  
11 payment and the terms for payment.

12 (e) (1) Except as provided in paragraph (2), the board shall not  
13 renew or reinstate the license or approval of any person who has failed to  
14 pay all of the costs ordered under this section.

15 (2) Notwithstanding paragraph (1), the board may, in its  
16 discretion, conditionally renew or reinstate for a maximum of one  
17 year the license or approval of any person who demonstrates  
18 financial hardship and who enters into a formal agreement with the  
19 board to reimburse the board within that one year period for those  
20 unpaid costs.

21 (f) All costs recovered under this section shall be deposited in the  
22 Physical Therapy Fund as a reimbursement in either the fiscal year in which  
23 the costs are actually recovered or the previous fiscal year, as the board may  
24 direct.

### 25 **CAUSE FOR DISCIPLINE**

26 (Conviction of a Crime)

27 11. Respondent is subject to disciplinary action under sections 2660  
28 subdivision (d), 2661, 490, and 493 of the Code and California Code of Regulations Title

1 16, section 1399.20 in that respondent was convicted of a crime substantially related to the  
2 qualifications, functions, or duties of a physical therapist assistant. The circumstances are  
3 as follows:

4           A.     On or about April 16, 2003 respondent was involved in a traffic  
5 collision. The California Highway Patrol (CHP) was called to the scene and noticed  
6 that respondent's breath smelled of alcohol. The CHP started a DUI investigation  
7 to determine respondent's sobriety. Respondent was asked to perform several field  
8 sobriety tests, which he failed. Respondent was then given a Preliminary Alcohol  
9 Screening (P.A.S.). The two breath samples that were obtained from the P.A.S.  
10 registered at .126% and .123%. The CHP then arrested respondent for driving  
11 under the influence. On or about May 5, 2003 respondent was charged with three  
12 counts:

13               **Count 1** - Driving Under the Influence of Alcohol or Drugs (Vehicle  
14 Code § 23152 subd. (a));

15               **Count 2** - Having .08% or More, by Weight, of Alcohol in His/Her Blood  
16 While Driving a Vehicle (Vehicle Code § 23152 subd. (b)); and

17               **Count 3** - No Proof of Car Insurance (Vehicle Code § 16028 subd. (a)).

18           B.     On or about October 7, 2003 in case number 3MT04367 of the  
19 Municipal Court of Los Angeles, County of Los Angeles, Metro Branch District, in  
20 *The People of the State of California v. Robert Dale Graham*, respondent was  
21 convicted of Counts 1 and 2. In furtherance of justice, pursuant to Pen. Code §  
22 1385, Count 3 had been dismissed on September 29, 2003.

23           C.     As a result of this conviction, on or about October 17, 2003,  
24 respondent was placed on summary probation for a period of 36 months under the  
25 following terms and conditions: (1) pay \$1,359 to the court for restitution, fines and  
26 assessment fees; (2) enroll in and successfully complete a 3-month licensed first-  
27 offender alcohol and other drug education and counseling program; (3) restrict  
28 driving for 90 days; (4) do not operate a motor vehicle with any measurable amount

1 of alcohol in the blood system; (5) do not refuse to take a chemical/breath test for  
2 alcohol or drug consumption when requested by a peace officer; (6) do not drive a  
3 motor vehicle unless properly licensed and insured; and (7) complete the H.A.M.  
4 and M.A.D.D. programs.

5 D. The conviction of the crimes of Driving Under the Influence of  
6 Alcohol or Drugs and Having .08% or More, by Weight, of Alcohol in His Blood  
7 While Driving a Vehicle (Vehicle Code § 23152 subdivisions (a) and(b)), are  
8 substantially related to the qualifications, functions, or duties of a physical therapist  
9 assistant.

10 **PRAYER**

11 WHEREFORE, Complainant requests that a hearing be held on the matters  
12 herein alleged, and that following the hearing, the Physical Therapy Board of California  
13 issue a decision:

14 1. Revoking or suspending Physical Therapist Assistant License No.  
15 AT 4342, issued to Robert D. Graham;

16 2. Ordering Robert D. Graham to pay the Physical Therapy Board of  
17 California the reasonable costs of the investigation and enforcement of this case, pursuant  
18 to Business and Professions Code section 2661.5;

19 3. Taking such other and further action as deemed necessary and  
20 proper.

21 DATED: October 5, 2004

22 Original Signed By:  
23 STEVEN K. HARTZELL  
24 Executive Officer  
25 Physical Therapy Board of California  
26 State of California  
27 Complainant  
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